

MINUTES
WARRICK COUNTY AREA BOARD OF ZONING APPEALS

Regular meeting held in the Commissioners Meeting Room,
Third Floor, Historic Courthouse,
Boonville, Indiana
November 28, 2016 at 6:00 P.M.

PLEDGE OF ALLEGIANCE:

MEMBERS PRESENT: Jeff Valiant, Chairman, Tina Baxter, Terry Dayvolt, Doris Horn, Mike Moesner, Jeff Willis and Mike Winge.

Also present were Morrie Doll, Attorney, Sherri Rector, Executive Director and Sheila Lacer, Staff.

Roll call was taken and a quorum declared present.

MINUTES: Upon a motion made by Doris Horn and seconded by Mike Winge the Minutes of the last regular meeting held October 24, 2016 were unanimously approved as circulated. Upon a motion made by Terry Dayvolt and seconded by Mike Moesner the Executive Session held November 10, 2016 were unanimously approved as circulated.

Jeff Valiant: Before we get started tonight I have a couple of things I do want to say. First I want to say thank you to everybody here tonight whether you are for or against or whatever, thank you for exercising your right, being out here. I am sure the Board would probably kick my, kick me if I said I wish every meeting was like this, but it is good to see. It is good to see people involved in your county so I do want to say thank you. That meeting last month was a little crazy, ten hours, but we wanted to make sure everybody got their voice in and their voice heard. Thank you to the Board. I know for the last thirty days you guys have been going through, rifling through paperwork, reading, informing yourselves, making visits, taking time out of your work and personal schedules to get yourself educated for tonight and I appreciate that.

So how we are going to do this tonight is I am going to call this item up and I will read through the same stuff as last month, the synopsis of the application. I am going to ask for a motion, if there is a motion prepared by any Board member, if so I will ask for a second and if so I will call for discussion and we will have any discussion that needs to be and keep in mind this is discussion amongst the Board. The record is closed so there are no more comments from counsel or applicants or remonstrance or anything. You guys are basically here to listen tonight. I think we have one other item we do need to take care of before – we will cover that after I get started here. But just to make sure, and just like we did last month, everybody was great last month. Just give everybody the time to talk, listen to them talk, we don't need comments or yelling or any kind of anything screaming from the crowd. Okay, give these guys time to discuss. That is what tonight is about. Okay. Everybody good on that?

First item on the agenda.

SPECIAL USE:

BZA-SU-16-14(A) (Amended Petition)

APPLICANT: Prime Foods Holdings, LLC, by Ronald Bennett, Gen. Mgr.

OWNERS: Prime Foods Holdings, LLC, by Ronald Bennett, Gen. Mgr. (Pcl. P); Midwest Coal Reserves of Indiana, LLC, by Mark Scimio, V.P. (Pcls A-O) & The Irene Wasson Revocable Living Trust created U/T/A July 9, 1998 by Rita W. Roth, Trustee. (Pcl Q)

PREMISES AFFECTED: Property located on the E side S.R. 61 & the N side of Kelly Rd. approximately 3,000' E & 2,300' N of the intersection formed by S. R. 61 & Kelly Rd.(N 600). Hart Twp. (*Complete legal on file.*)

NATURE OF CASE: Applicant requests a Special Use (SU 5) from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, IN to allow a commercial facility for a confined feeding operation for laying hens and egg production in an "A" Agriculture and "CON" Recreation and Conservancy zoning district. *Advertised in the Standard October 13, 2016. Con't from last regular meeting held October 24, 2016.*

Jeff Valiant: Before we go anywhere else, Counsel do you have anything to talk about on this?

Morrie Doll: I do. This afternoon at about 4:00 the Area Plan Commission office was served with a motion by Long and Mathies Law Firm on behalf of their clients who are remonstrators against the application challenging the propriety of a member of this Board of participating in its deliberation. It is alleging that Mike Moesner is in violation of IC 36-7-4-909(a) because he is either biased, prejudiced or unable to be impartial has a direct or indirect financial interest in the outcome of the hearing or decision. The motion speaks for itself, but in summary it alleges that because Warrick County Farm Bureau or Co-Op has in fact, through its representatives, participated in this deliberation as remonstrators in favor of the application and certain individuals who are in fact agents or officers or past or present Board members of Warrick County Co-Op have either testified or signed up as in favor of the application. That Mike Moesner, who is currently the Secretary of the Warrick County Farm Bureau, Inc., a member of Farm Bureau and a present or past Board member of Farm Bureau, would therefore be ineligible to participate in the deliberation of this. The courts have determined that the existence of a conflict of interest a question of fact, so with their approval he would like to ask Mike some questions about his participation.

Jeff Valiant: You seek approval from me?

Morrie Doll: Yes.

Jeff Valiant: I will approve it.

Morrie Doll: Mike let me ask you a question. Are you a member of Farm Bureau Co-Op?

Mike Moesner: Farm Bureau Inc., yes.

Morrie Doll: Okay. And as a member of Farm Bureau, Inc. is that primarily because you therefore can purchase Farm Bureau insurance?

Mike Moesner: You have to be a Farm Bureau member to have Farm Bureau insurance, yes.

Morrie Doll: And you have Farm Bureau insurance?

Mike Moesner: Yes, I do.

Morrie Doll: Alright, and do you have an office with Farm Bureau? Are you elected to any position with Farm Bureau?

Mike Moesner: I am the Secretary/Treasurer, yes.

Morrie Doll: Okay. Since you became aware that this application was coming before the BZA upon which you serve, can you describe to the other members of the Board what steps you have taken to insulate or isolate yourself from Farm Bureau's consideration or positions on this application.

Mike Moesner: Since this came up I informed Gary Michel, who is Chairman of the Board, that I would not attend any meetings, any Board meetings, any Farm Bureau meetings period, until this was resolved. And he had to appoint somebody to take my place to record the Minutes and do the treasury part while I was not involved. So since this come up I have not attended any Farm Bureau meetings whatsoever.

Morrie Doll: So did you participate in any deliberation by Farm Bureau in formulating their opinion to support this?

Mike Moesner: No. No. No.

Morrie Doll: Do you think that based upon your separation from Farm Bureau's consideration during this pending, do you bring any bias to this decision?

Mike Moesner: I take my responsibility very seriously on any Board that I sit on and my decisions are based on facts that I study and its – that is just the way I operate.

Morrie Doll: So you believe your position is independent of the position of Farm Bureau?

Mike Moesner: Yes.

Morrie Doll: Do you think you are prejudice for or against the application because of your Farm Bureau participation?

Mike Moesner: As I stated, I am going to look at the facts and make my decision based on facts, not emotion.

Morrie Doll: And do you think you can be impartial in your deliberation?

Mike Moesner: Yes.

Morrie Doll: Do you stand to make any direct or indirect financial gain whether this application is approved or denied?

Mike Moesner: No.

Morrie Doll: It would be my representation to the Board that based upon the facts Mr. Moesner has testified to on the record that he does not meet the definition of someone who should be disqualified from participating in the hearing. I would recommend to the Board he would be allowed to fully participate tonight.

Jeff Valiant: Do you need a motion on that?

Morrie Doll: Yes.

Mike Winge: I will make that in the form of a motion.

Doris Horn: I will second that.

Jeff Valiant: Okay, there is a motion and a second to – what Morrie has laid out for us. All in favor.

The motion unanimously carried.

Morrie Doll: Thank you. Now I think you are ready.

Jeff Valiant: Alrighty. We went over and we know what is in front of us so at this time I am going to ask the Board if anyone has a promotion, no a motion prepared in referenced to this application.

Terry Dayvolt: I have a motion prepared. For approval.

Jeff Valiant: Okay.

Morrie Doll: Is it in writing?

Terry Dayvolt: It is in writing and I have copies for all Board members.

Jeff Valiant: Terry are you prepared to read all of this?

Terry Dayvolt: I may have to get a second wind through all of this but I will.

Warrick County Board of Zoning Appeals November 28, 2016

Prime Foods – Special Use #5
Findings of Fact

I, TERRY DAYVOLT, make a motion to approve the Special Use #5, and that the findings of fact be made from testimony, proposed use statement, exhibits, videos, and supported by substantial evidence as follows:

1. Whether the specific site is appropriate location for the uses?

- a. The area is zoned for agriculture. Confined feed operation is allowed as a Special Use in agricultural or conservancy. The entire area around the 600 acres is zoned agriculture except for a small area, which is C-3 for the dirt riders track and a small piece of property next to Hwy. 61 is zoned industrial. (Minutes Page 10; Exhibit Tab 6).
- b. The total area is 600 acres. It is 1.5 miles from Hart to Kelly on the western edge, and about 1.25 miles wide on the southern edge. (Minutes Page 10).
- c. The predominant wind direction from the southwest, the west southwest moving towards the northeast and if you look at that proximity of receptors, they are protected by the tree buffers as well as one to two receptors out beyond a half a mile and so very little exposure for this site selection. The Purdue Setback Model has a predicted odor setback or setback model and potential exposure of individuals to odor events. Inside the boundary you will see 4-6% odor occurrence. Outside the boundary you will see less than 4-6% odor occurrence. All residences are outside the boundaries. (Minutes Pages 20-21; Exhibit Tab 10).
- d. The ground has been tested for stability by boring 20-50 feet deep and initial evaluations are proving that the site is going to meet structural stability. (Minutes Pages 21-22).
- e. The Special Use fits within the Warrick County Comprehensive Plan envisioned for this area. One of the goals of the Comprehensive Plan is to preserve Warrick County as a place that values and enhances the interests of agriculture and agri-business. Additionally, a Warrick County action item cautions against reclaimed coalmine land to be constructed as residential areas without adequate precautions. (Minutes Page 10).
- f. Facility will be located alongside Highway 61 and will only be accessed by Highway 61, thus eliminating all truck traffic on county roads. (Minutes Page 9). Once Phase 3 is completed, Prime Foods estimates about 20 trucks per day. (Minutes Page 15).

- g. The 600 acres is an isolated location with substantial tree cover as screening from residences to the south and the west. (Minutes Page 11, 18)
- h. Additional trees will be planted in gaps where trees do not exist today along Kelly Road and Hart Road. (Minutes Page 11-12; Exhibit Tab 2)
- i. Based upon best available floodplain map, it appears that the feed mill and bio-security buildings are not located in a floodplain. However, if the buildings are determined to be in the floodplain, those buildings will be moved further south to accommodate the floodplain. (Minutes Page 12-13; Exhibit Tab 4).
- j. Boonville has assured Prime Foods that it will have access to water on site. (Minutes Page 15). However, if Boonville water is not available, then an onsite water supply will have to be developed, which is regulated by the Office of Water Quality and requires water permits to assure water supply, protection of that water supply, and the integrity of that water supply, and that Prime Foods does not have a negative impact on surrounding waters. (Minutes Page 24).

2. Whether the use as developed will adversely affect the surrounding area?

- a. According to a real estate appraisal expert that spoke with county assessors and used actual market data, not opinions, to perform sales comparisons on properties near CAFO's, the proposed Prime Foods CAFO egg laying operation will have no adverse impact on the market value of residential or industrial properties in the surrounding area. (Minutes Page 26-31).
- b. Manure management plan. The chickens are over a cushioned wire floor and the manure drops through the wire floor and onto a manure belt. When a chicken defecates, the moisture content of the manure is about 78% and is in the shape similar to chewed bubble gum. The manure continues to dry while on the belt due to the velocity of the wind going over the manure, which further dries from 78% to 58% moisture content. Next the drying tube, which is beneath the cushioned wire floor, but above the manure belt, blows warm dry air over the manure and continues that process of drying it and gets it down to 40-45% moisture content. This process allows the manure to remain in its original bubble gum shape, which retains the organic nitrogen within the manure. This prevents the organic nitrogen from breaking down into ammonias, dispersing and causing offensive odors and gases. Additionally, due to the low moisture content of the manure, flies and the larva from flies do not reproduce in this dry of manure. So the fly population at Prime Foods will be very minimal. Finally, the facility is entirely enclosed over a concrete floor and the manure moves from layer building to manure barn on a completely enclosed conveyor belt. (Minutes Pages 15-17).

- c. Odor issues have been resolved due to facility design, fully enclosed, dry manure system, exhaust fans, and a blockade wall to dissipate odors within 50-100 feet. Because the dry manure system does not create the gases and odors, there are fewer gases and odors to exhaust. (Minutes Page 16, 19).
- d. Prime Foods is required to perform inspections on manure storage, feed storage, loadout or access areas, erosion control around the site, storm water diversions, storm water protection, there is a storm water certification requirement, and a storm water pollution prevention plan. The water resources around this site are going to be protected. (Minutes Page 23).
- e. Prime Foods proposed all enclosed design is considered a zero discharge facility under the environmental protection agency's clean water act. (Minutes Page 16). IDEM rules and Federal CAFO rules establish minimum standards that protect and guide the environmental compliance and stewardship of this site. The concern about water quality; concern about ground water; concern about surface water; there are siting separation distances that are in place. This site meets and exceeds all of those separation distances for protecting surface water and ground water. There are design and construction operational standards that minimize or eliminate the potential for spills, seepage, and manure impacts to surface and ground water. (Minutes Page 22).
- f. How manure is spread is determined by nutrient content of the soil and the manure. IDEM regulates this manure spreading process. No egg producer in the United States currently exceeds the greenhouse gas rules and regulations so Prime Foods does not qualify for greenhouse gas reporting. (Minutes Pages 16, 22). The person buying or spreading manure is regulated by the state chemist, has to be certified/licensed to utilize the manure and is subject to the same type of criteria that a confined feeding operation would be. (Minutes Page 23).
- g. Health Impact/Diseases – Almost no diseases that are common to chickens that are also common to humans. Only New Castle Disease, West Nile Virus, and Avian Influenza have the potential to infect humans under the viral diseases. (Minutes Page 13, 24; Exhibit Tabs 11 & 12).

3. Whether there will be nuisance or serious hazard to vehicles, pedestrians, or residents?

- a. The pullet complex is 1/3 mile (1770 feet, Exhibit Tab 2) from the closest residence to the South and about 1/2 mile from the closest residence to the Northeast, the Cobb's residence. (Minutes Page 12; Exhibit Tab 2).
- b. The egg laying facility is over 1/3 mile (1840 feet) from the closest residence to the West and over 1/2 mile (2790 feet) to the Southeast, the Cobb's

residence. (Minutes Page 12, 19; Exhibit Tab 2).

- c. Taking into account wind direction from Section 1(c) above, the separation distances to all facilities are greater than ¼ mile (1320 feet). Many other counties have regulatory requirements of 1320 feet. All of Prime Foods setbacks are more than 1320 feet and most are greater than ½ mile. (Minutes Page 19). The Purdue Setback Model takes into account several different factors that are important to this site, including: the number and type of birds; orientation, shape, and size of buildings; building design and management; manure drying; the enclosed manure storage; and ventilation systems. The Purdue Setback Model has determined the Odor Exposure Setback Boundary for this site to be more than adequate on all sides. (Minutes Pages 20-21; Exhibit Tab 10).
- d. No hazard to vehicles exists because all truck traffic will enter and leave via Highway 61 and not use county roads. (Minutes Page 9).
- e. No pedestrian traffic on Highway 61, and no pedestrians will be allowed to enter and walk the 600 acres because it will be fenced off from the public. (Minutes Page 9).
- f. The all-enclosed facility design reduces odor. (See Section 2(c) above and Minutes Pages 16, 19).
- g. Prime Foods is required to have a storm water runoff prevention plan. (See Section 2(d) and Minutes Page 23).
- h. Prime Foods is a zero discharge facility. (See Section 2(e) above and Minutes Pages 16, 22).
- i. There are no health concerns according to experts because of the facility design and the dry manure management plan. (See Sections 2(b), 2(c), 2(d), 2(e), 2(f), 2(g) above; Minutes Pages 15-17, 19, 22-24; Exhibit Tabs 11-12).
- j. Diseases – There are almost no diseases that are common to chickens that are also common to humans. With health, the major viral diseases of chickens do not typically affect human beings. Only New Castle Disease, West Nile Virus, and Avian Influenza have the potential to infect humans under the viral diseases, and these instances are rare. (Minutes Page 13, 24-25; Exhibit Tabs 11 & 12).
- k. An emergency spill response plan is required and Prime Foods must notify IDEM within 2 hours and IDEM will be out to oversee and to inspect the reactions if in fact an emergency occurs. (Minutes Page 24, 40).

4. Whether adequate and appropriate facilities will be provided for proper operation of the uses?

- a. Prime Foods is building a state of the art facility designed to be friendly to the birds, making them comfortable and healthy. The pullet houses are very specifically designed to grow the birds so that they will adapt readily and easily to the layer barn as well. (Minutes Page 13). These buildings are built to last 25 years and at the end of that life, the buildings can retrofit the interior to the latest design and upgrade and continue on. (Minutes Pages 42-43).
- b. The egg layer facility is a European designed house with a closed tunnel ventilation system. It has pressurized air-drawing tubes and a completely enclosed manure handling system. This type of facility is called an aviary because the birds have the freedom to move around inside the building. (Minutes Page 15).
- c. While in the pullet houses, the birds go through an immunization program that will give them a healthy start to life and protect them throughout their life much like we do with our children. (Minutes Page 13).
- d. Egg laying facility will be set into the earth 25 feet, so the eaves of the building will be about ground level. (Minutes Page 11).
- e. IDEM requires Prime Foods to have 180+ day manure storage. (Minutes Page 22).
- f. Composting the daily mortality rate using an anaerobic style composting because it does not create odors and it is easy to manage and maintain. The carcasses will compost within 90 days and a person would not be able to find any parts. The daily mortality rate is about 44 birds per 500,000 birds in simultaneous production. The composting will be 100% enclosed, just like the manure. (Minutes Page 44).
- g. Prime Foods is a zero discharge facility. (See Section 2(e) above and Minutes Pages 16, 22).
- h. Two single-family houses for managers will be built on the 600-acre property. These two houses will not be barracks or dormitories for migrant workers. These are full time jobs, not seasonal employment. (Minutes Pages 16-17).

5. Whether the use is in harmony with the Warrick County Comprehensive Plan?

- a. The 600-acre area is agriculturally zoned area. (See Section 1(b) and Minutes Page 10)

- b. Prime Foods' project promotes agriculture, agri-business, and job growth in Warrick County and has a significant economic impact on the community. This project will be built in 3 phases, for a total of \$70 million dollar investment. Employment will be 70-80 jobs by the end of Phase 3. These jobs will range from \$13.50-\$14.00/ per hour for typical works, to \$15.00-\$17.00 per hour for supervisors, and \$80,000-\$100,000 per year for complex managers. (Minutes Pages 33, 41).
- c. According to Indiana Farm Bureau, the ripple effect on the region of a 2 million egg layer complex is \$61.1 million to \$100.6 million; \$8.4 million to \$15.9 million in additional income. Jobs created 256 to 456. Local folks will be selling their grain for the feed. Local drivers will be driving the trucks that take the manure and eggs out. The ripple effect of Indiana agriculture is staggering and will have a positive impact in Warrick County. (Minutes Page 33).
- d. According to the Comprehensive Plan, reclaimed mining land is not desirable area for residential development. (See Section 1(e) above and Minutes Page 10).

6. Whether the use is essential or desirable to the public convenience and welfare?

- a. Significant economic impact on community. (See Section 5(b) and 5(c) above and Minutes Pages 33, 41).
- b. Tax dollars – property tax caps are 2% on the land, and 3% on the buildings and improvements, which is substantial tax revenue for Warrick County. (Minutes Page 33).
- c. The Prime Foods facility will have no negative impact on property values. (Minutes Pages 26-31).
- d. In a time of shrinking agricultural acres combined with a greater need for food supply due to an ever-increasing population, this Prime Foods project makes sense. (Minutes Page 35).
- e. The chicken manure by-product is in high demand and benefits local farmers and reclaimed coalmine farm ground by adding much needed nutrients back into the sterile soil. (Minutes Page 23).

And the Application be approved in accordance to the application and plans on file, subject to the following conditions:

- 1. Subject to the property being in compliance at all times with the applicable zoning ordinances of Warrick County.

2. Subject to all public utility easements and facilities in place.
3. Subject to all federal and state permits and regulations.
4. Subject to Prime Foods planting conifer/evergreen trees, at least six (6) feet tall, along Hart Road and Kelly Road to provide adequate screening from the roadway. (Minutes Page 12).
5. Subject to all Prime Foods facilities on this property must adhere to the United Egg Producers Animal Care Certified (ACC) program standards. (Minutes Page 11, 26; Exhibit Tabs 18 & 19)
6. Subject to Prime Foods, within 36 months of approval, completing its establishment of Phase 1 of the requested Special Use.

Mike Winge: I second that motion.

Jeff Valiant: Okay, we have a motion on the floor and a second. Before I call for a vote I am going to ask for any discussion amongst the Board.

Unidentified speaker: Who seconded?

Jeff Valiant: Mr. Winge. Discussion among the Board, anybody have anything they want to question or add condition wise.

Jeff Willis: The manure houses. In here it says they are completely enclosed. Are the manure houses completely enclosed or do they have windows at the top?

Terry Dayvolt: It says blockade. (*Inaudible*) blocked in.

Jeff Willis: It was in the section about the composting. It said it was completely enclosed.

Morrie Doll: Do you have a copy of the Minutes.

Jeff Valiant: Yes, I mean it was. I can go back here and look it up.

Morrie Doll: Blockade wall (*unaudible*). I think that is a different question though.

Jeff Willis: Yeah, it is was in section or number 4 section (f) is where I was...

Terry Dayvolt: Right here?

Jeff Willis: Number 4 section (f)

Terry Dayvolt: I hope I didn't skip a page.

Sherri Rector: It is on page 6. Are you talking about (f), composting?

Terry Dayvolt: That is completely enclosed.

Sherri Rector: Yes, it is completely enclosed.

Terry Dayvolt: It is a 100% enclosed for composting.

Jeff Valiant: Any other questions, discussion or questions?

Doris Horn: In the Minutes on page 80 it says 2 million layer chickens not counting the pullet house chicks will consume approximately 3 million pounds of food weekly which equals to about sixty tractor trailer trucks per week plus the twenty trucks per week needed to haul the eggs to Prime Foods and other facilities.

Sherri Rector: Are you wanting to add something to the motion? Is that what you are...

Jeff Valiant: Do you have a condition?

Doris Horn: I just wanted to bring that up as a comment.

Sherri Rector: If anybody wishes to add anything to the conditions or to amend any of the conditions then this is the time to say. And that is what the discussion is now on the motion that has been made. Not the minutes or...

Jeff Willis: I just wanted to make sure it was completely enclosed. I would like to see some more pine, some more evergreen trees in the back behind the...at least the manure house on the – where they raise the hatchlings. On that side because it is closer to the Cobb residence than a ½ mile – barely but...

Sherri Rector: The pullet houses up at the north?

Jeff Valiant: They are on the south.

Sherri Rector: They are now down on the south. Okay.

Jeff Willis: In their drawing, and I think it is in Phase 3 it becomes point 48 (.48) miles from the Cobb residence.

Sherri Rector: So in number four where he read “Subject to Prime Foods planting conifer/evergreen trees, at least six (6) feet tall, along Hart Road and Kelly Road to provide adequate screening from the roadway” you would like to add....

Jeff Willis: Some evergreen trees, I guess they don’t have to be six feet tall now but by the time they put the – in phase 3 when they put that building in I would like them to be at least six feet or taller.

Jeff Valiant: Terry are you asking for six foot tall going in?

Terry Dayvolt: Yes I am.

Morrie Doll: Jeff, where do you want the trees?

Jeff Willis: Between the pullet houses, is that where the babies are?

Sherri Rector: Yes.

Jeff Willis: Between the pullet houses and the Cobb residence.

Jeff Valiant: Basically just adding some more protection.

Jeff Willis: Some more protection because most of those trees there on Google Map or Google Earth look like they died every winter.

Sherri Rector: On the edge of the property?

Jeff Willis: It can either be on the edge of the property or closer..

Jeff Valiant: Inside the tree line?

Jeff Willis: Inside the tree line.

Jeff Valiant: I see what you are saying.

Jeff Willis: Whichever fits, you know which ever is easiest for the company.

Jeff Valiant: Do we need to make that a separate...

Morrie Doll: It can be in the form of a motion to amend, decipher it and then vote on the motion to approve. So Jeff, it would be your motion to amend Terry's motion to add the planting of conifers and evergreen trees at least six feet tall between the pullet houses and the Cobb residence, perhaps adjacent to the tree line.

Jeff Willis: Yes.

Morrie Doll: So the question would be is there a second.

Jeff Valiant: Did you make that motion, I am sorry. I am writing this down. Is there a second on that?

Mike Moesner: I would second that.

Jeff Valiant: All in favor.

Unanimous approval.

Jeff Valiant: Any other conditions? Amendments? Anything? If not ...

Morrie Doll: Will you take a roll call vote?

Sherri Rector: I am ready.

Jeff Valiant: A roll call vote.

Sherri Rector: Okay. Mike Winge.

Mike Winge: Yea

Sherri Rector: Jeff Willis

Jeff Willis: Yea

Sherri Rector: Mike Moesner

Mike Moesner: Yes.

Sherri Rector: Doris Horn

Doris Horn: No

Sherri Rector: Terry Dayvolt

Terry Dayvolt: Yes

Sherri Rector: Tina Baxter

Tina Baxter: Yes

Sherri Rector: Jeff Valiant

Jeff Valiant: Yes.

Sherri Rector: The motion carries.

Jeff Valiant: Alright. When we break.

Audience outbreak

Jeff Valiant: We are going to take a ten minute break because we have four other applications on the agenda. Those people are hanging out downstairs. Sir, if you would please wait and they

can come up and the people that want to can leave, if not you can hang out because it is a public meeting. Ten minute recess. (6:40 p.m.)

The meeting reconvened at 6:50 p.m.

Jeff Valiant: We are going to call the meeting back to order and carry on with the rest of the business for tonight.

BZA-SU-16-15

APPLICANT: Alvey's Sign Co. by Susy Basham, Permitting Clerk

OWNER: DSIG LLC by Dilbag Singe, Owner

PREMISES AFFECTED: Property located on the S side of SR 662 approximately 0' SE of the intersection formed by SR 662 & Stacer Rd., Ohio Twp. Lot 2 Ogle Commercial Park. 5522 *Stacer Rd.*

NATURE OF CASE: Applicant requests a Special Use, (SU 8) from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, IN to allow an Improvement Location Permit to be issued for an electronic message board in a "C-3" Highway Commercial zoning district. *Advertised in the Standard November 17, 2016.*

Jeff Valiant: Sherri can we have a staff report?

Sherri Rector: We have all the return receipts from certified mail to the adjacent property owners. The existing land use is a gas station/convenience store. The surrounding and zoning and land use is property to the east is a lot in Ogle Commercial Park and is zoned C-4 (vacant); South is R-1A (vacant/parking) and C-3; West is R-1A (residences) & C-4 (Do it Right Transmission); North across SR 662 is all C-4. There is no flood plain and they have an existing entrance off SR 662 and Stacer Rd. They have answered the questions on the application and they state: *Gas station is currently branded Circle D and will be offering Phillips 66. The new price sign cabinet with LED prices will be consistent with the rebranding to Phillips 66.* There is an existing sign on the property; however no permits were issued for it and it is inside the PUE. This sign will be moved back to meet yard requirements.

Jeff Valiant: Alright. Applicants will you please state your name for the record.

Susie Basham: I am Susie Basham with Alveys Sign Company.

Dilbag Singe: Dilbag Singe, DSIG LLC.

Jeff Valiant: Fantastic. Thank you. Do you have anything to add to the staff report?

Susie Basham: No. All we are asking for is to show the gas price. We did have Morley and Associates re-do all of that so we are going to make sure the sign is in the proper location.

Jeff Valiant: Any questions from the Board? Any remonstrators for or against this project? Seeing we have none, I will ask one more time for questions from the Board and if not I will entertain a motion.

Mike Moesner: I, Mike Moesner, make a motion the finding of fact be made as follows from the testimony and proposed use statement:

1. The USE is deemed essential or desirable to the public convenience or welfare.
2. The USE is in harmony with the various elements or objectives of the Land Use Plan for Warrick County.
3. The USE will not be a nuisance or serious hazard to vehicles, pedestrians, or residents.
4. The USE as developed will not adversely affect the surrounding area.
5. Adequate and appropriate facilities will be provided for proper operation of the USE.
6. The specific site is appropriate for the USE.

And the Application be approved in accordance to the application and plans on file, subject to the following conditions:

1. Subject to the property being in compliance at all times with the applicable zoning ordinances of Warrick County.
2. Subject to all public utility easements and facilities in place.
3. Subject to an Improvement Location Permit being obtained for the new message board.
4. Subject to any required Building Permits being obtained.
5. Subject to the Special Use not being altered to become any other use nor expanded than that which was approved by the Board of Zoning Appeals.
6. Subject to no use of the words, 'stop', 'danger', 'look', or any other word which would confuse traffic.
7. Subject to no revolving beams of light or strobe lights.

Jeff Valiant: Motion on the floor. Is there a second?

Tina Baxter: I'll second that.

Jeff Valiant: A motion and a second, all in favor.

Motion carried unanimously.

Sherri Rector: We will have your approval done on Wednesday and then you can get your permit.

Jeff Valiant: Next item on the agenda.

BZA-SU-16-17

APPLICANT: Crystal McDaniel

OWNER: Same

PREMISES AFFECTED: property located on the S side of Old SR 66 approximately 350' E of the intersection formed by Yankeetown Rd. & Old SR 66, Anderson Twp. *(complete legal on file) 2577 Old SR 66*

NATURE OF CASE: Applicant requests a Special use, (SU-12) from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, IN to allow a home occupation of a nail salon in an "A" Agriculture zoning district. *Advertised in the Standard November 17, 2016*

Jeff Valiant: Sherri may we have a staff report.

Sherri Rector: Yes, we have all of the return receipts except from Rachel Carpenter. We have the white pay receipt. It was mailed to the correct address so whenever you get your green receipt you need to bring it in or if you get back the whole envelope bring it in. The existing land use is a residence. All the surrounding property is zoned Agriculture with residences. There is no flood plain on the property. She has an existing driveway off of old SR 66. A home occupation can occupy not over 20% of the first floor area. The house is 1500 square feet and she could use up to 300 square feet; however, she is proposing to use 120 square feet. She has answered the Special Use questions and states on the application she wants a manicurist salon. You can see on her proposed use statement basically that she will have at the most two people, one coming to be next and one there and then leaving so basically one person there at a time so she has adequate parking. You can see by the plot plan and the driveway. For home occupations there are certain standards that they meet that you all know are a part of the findings and conditions as part of the ordinance.

Jeff Valiant: Will you state your name for the record.

Crystal McDaniel: Crystal McDaniel

Jeff Valiant: Ms. McDaniel do you have anything to add to the staff report?

Crystal McDaniel: No

Jeff Valiant: Alright. Any questions from the Board?

Terry Dayvolt: So you do state you are going to be the only employee?

Crystal McDaniel: Yes

Jeff Valiant: So outside of an overlapping appointment you will only have one customer at a time.

Crystal McDaniel: Yes

Tina Baxter: Are you going to apply for a license for a salon from the State?

Crystal McDaniel: Yes

Jeff Valiant: Any other questions from the Board? Any remonstrators for or against this project if so please step forward. Seeing as we have none I will ask one more time for questions from the Board if not I will entertain a motion.

Mike Winge: I, Mike Winge make a motion finding of fact be made as follows from the testimony and proposed use statement:

1. The USE is deemed essential or desirable to the public convenience or welfare.
2. The USE is in harmony with the various elements or objectives of the Land Use Plan for Warrick County.
3. The USE will not be a nuisance or serious hazard to vehicles, pedestrians, or residents.
4. The USE as developed will not adversely affect the surrounding area.
5. Adequate and appropriate facilities will be provided for proper operation of the USE.
6. The specific site is appropriate for the USE.

And the Application be approved in accordance to the application and plans on file, subject to the following conditions:

1. Subject to the property being in compliance at all times with the applicable zoning ordinances of Warrick County.
2. Subject to no identifying or business sign being erected or placed on any site for which the SU 12 has been granted by the Board of Zoning Appeals.
3. Except for the shipment and receipt of goods, products or items necessary for the SU 12, the use shall not be visible from the exterior of the premises and no retail sales.
4. No person or persons may be employed in the SU 12 home occupations at site other than the resident (residents) of the site for which the SU 12 has been granted.

5. Subject to the Special Use not being altered to become any other use nor expanded than that which was approved by the Board of Zoning Appeals.

Doris Horn: I will second that motion.

Jeff Valiant: We have a motion and a second. All in favor.

The motion carried unanimously.

Sherri Rector: We will have your approval done on Wednesday and you can pick it up.

Jeff Valiant: Alright. Next item.

BZA-SU-16-18

APPLICANT: Custom Sign & Engineering, Inc. by Chris Moore, Sales Rep.

OWNER: Bayer Plumbing Inc. by Frank Bayer, owner.

PREMISES AFFECTED: Property located on the N side of Bell Oaks Dr. approximately 500' W of the intersection formed by Bell Oaks Dr. & SR 261, Ohio Twp. Pt. Lt 5 High Ponte Centre Sec. C.

NATURE OF CASE: Applicant requests a Special Use, (SU 8) from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, IN to allow an Improvement Location Permit to be issued for an electronic message unit to be installed below an existing sign in a "C-4" General Commercial zoning district. *Advertised in the Standard November 17, 2016*

Jeff Valiant: Sherri can we have a staff report.

Sherri Rector: Yes we have all of the return receipts except for BSCG Enterprises LLC but we do have the white pay receipt. The existing land use is a plumbing company and the surrounding property the north, east and west is zoned M-2 with businesses and to the south is zoned Agriculture being the ball park (north and west are zoned C-4 with businesses and to the south and east is C-3 with businesses). There is no flood plain on the property and there is an existing entrance off Vann Road (Bell Oaks Drive). There is an existing pole sign on the property. They state on the application *remove manual copy board and install new 12' x 8' electronic message unit*. They have answered the Special Use questions.

Jeff Valiant: Please state your name for the record.

Chris Moore: Chris Moore, Custom Sign

Frank Bayer: Frank J. Bayer

Jeff Valiant: Thank you. Do you have anything to add to the staff report.

Chris Moore. No, I think she covered it.

Jeff Valiant: Any questions from the Board? Any remonstrance for or against this project? Ask one more time for questions from the Board, if not I will entertain a motion.

Doris Horn: I, Doris Horn make a motion finding of fact be made as follows from the testimony and proposed use statement:

1. The USE is deemed essential or desirable to the public convenience or welfare.
2. The USE is in harmony with the various elements or objectives of the Land Use Plan for Warrick County.
3. The USE will not be a nuisance or serious hazard to vehicles, pedestrians, or residents.
4. The USE as developed will not adversely affect the surrounding area.
5. Adequate and appropriate facilities will be provided for proper operation of the USE.
6. The specific site is appropriate for the USE.

And the Application be approved in accordance to the application and plans on file, subject to the following conditions:

1. Subject to the property being in compliance at all times with the applicable zoning ordinances of Warrick County.
2. Subject to all public utility easements and facilities in place.
3. Subject to an Improvement Location Permit being obtained for the new message board.
4. Subject to any required Building Permits being obtained.
5. Subject to the Special Use not being altered to become any other use nor expanded than that which was approved by the Board of Zoning Appeals.
6. Subject to no use of the words, 'stop', 'danger', 'look', or any other word which would confuse traffic.
7. Subject to no revolving beams of light or strobe lights.

Mike Winge: I will second that.

Jeff Valiant: We have a motion and a second. All in favor.

The motion carried unanimously.

Sherri Rector: You can pick up your approval on Wednesday.

Jeff Valiant: We have two more items on the agenda but I understand that they...

Sherri Rector: Okay, yes, BZA-SU-16-20 needs to be continued. Ms. Anderson did not mail out the notices by certified mail with return receipt she just mailed them out certified so she has to re-notice everyone so it will just be a motion to continue.

BZA-SU-16-20

APPLICANT: Pampered Pet Nanny LLC, by Megan Anderson, Mbr.

OWNER: Steven & Megan Anderson

PREMISES AFFECTED: Property located on the E side of Libbert RD. approximately 0' NE of the intersection formed by Libbert Rd. & Vann Rd., Ohio Twp. *(complete legal on file) 3488 Libbert Rd.*

NATURE OF CASE: Applicant requests a Special Use (SU 24) from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, IN to allow an addition to an existing dog boarding facility approved in BZA-SU-11-20 on 9/26/11. Addition is for an additional 5 dogs to make facility hold 17 dogs in an "A" Agriculture zoning district. *Advertised in the Standard November 17, 2016*

Doris Horn: I will make a motion to continue BZA-SU-16-20.

Mike Winge: I will second that.

Jeff Valiant: We have a motion and a second to continue BZA-SU-16-20 to next month. I assume it is next month. Or until it is ready.

Sherri Rector: We gave her a new notice for the December meeting. I think it is a week early. I can't remember what day it is. I think the 19th so don't forget that.

Jeff Valiant: All in favor of that motion.

The motion carried unanimously.

Sherri Rector: BZA-V-16-19 also needs to be continued because Mr. Van Winkle just forgot to mail his notices so it needs to be continued to the December meeting also.

VARIANCE:

BZA-V-16-19

APPLICANT: Daryl Vanwinkle Construction, LLC, Daryl Vanwinkle, Mbr.

OWNER: Harpole Realty, LLC, Danny Harpole, Mbr.

PREMISES AFFECTED: Property located on the S side of Evansville Federal Dr. approximately 330' W of the intersection formed by Evansville Federal Dr. & SR 261, Ohio Twp. Lot 2 Evansville Federal Subdivision. 7835 SR 66.

NATURE OF CASE: Applicant requests a Variance from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, IN to allow an Improvement Location Permit to be issued for an addition to an existing business on property fronting on a dedicated by not maintained county right of way in a “C-3” Highway Commercial zoning district. *Advertised in the Standard November 17, 2016*

Doris Horn: I will make a motion that we continue BZA-V-16-19 to the December meeting.

Mike Winge: I will second that.

Jeff Valiant: We have a motion and a second. All in favor.

The motion unanimously carried.

Mike Winge: What is the date of the December meeting.

Sherri Rector: It is a week early and it is December 19th.

ATTORNEY BUSINESS:

Nothing

EXECUTIVE DIRECTOR BUSINESS:

Nothing

Jeff Valiant: No other business from the Board.

Doris Horn: I want to ask a question to our attorney. Okay, what I need to know is because he was questioned being on the Board for Farm Bureau, what did it make a difference then if someone from Purdue went with us on our sites to go visit some of these plants.

Morrie Doll: Well as a resource.

Doris Horn: Even though they weren't on the Board they were still Purdue is...

Morrie Doll: It's in the deliberation on voting. The conflict of interest statute says in Indiana Code that if you have met any of those six criteria, five criteria then you would have a conflict of interest from deliberating and voting on it. No voting occurred on your site visit. No deliberation occurred and any information that Purdue may have provided is an independent source of information. It was educational to you so that you could in fact form an opinion to vote. So there is a considerable amount of difference between them. And, you will remember that we actually had a Purdue County Extension Agent from a different county here the night of the presentation that we could have called on at that time to answer questions. So, pardon my attempt at humor, it is a chicken and an egg. It is a different situation. Okay? Did I answer your question?

Doris Horn: Partly, yes.

Morrie Doll: I will be happy to try further if you need me to.

Doris Horn: No. I guess, you just figure, you know Purdue is so into farming, which is wonderful – I have family members that are big into Purdue and stuff but I just wondered if you would take someone that is so, so positive for this...

Morrie Doll: Purdue also...

Doris Horn: should have brought somebody else that was opposed to it where you had both sides.

Morrie Doll: Purdue will tell you what they believe to be the truth is. In other words, if they think there is an odor problem they will admit it. If they think there is a run off problem they admit it. Purdue also does extensive research into environmental issues etc. It's their job to answer questions to the best of their knowledge, truthfully about agricultural issues.

Mike Winge: Morrie weren't there – didn't both sides use Purdue for testimony.

Morrie Doll: They did.

Mike Moesner: And that is one of the primary things that Purdue is – is information providing. Not just agriculture but businesses that rely on agriculture have to have a valid source and a place to get unbiased factual information. And I don't know where else we could have gotten that other than Purdue. IU they don't specialize in agriculture.

Morrie Doll: No

Mike Moesner: Or local colleges or universities here I don't think have any basis for information pertaining to an agricultural kind of environment.

Morrie Doll: Doris do you think that there was something particularly told to you by Purdue that was biased or prejudiced or untrue?

Doris Horn: No I don't think it was untrue, I mean I learned a lot from her I just, she was just so, so for it and I thought if you were to be swayed either way as a Board member ...you know was it a conflict of interest. That's all I was wondering.

Morrie Doll: It is an information providing service that we invited.

Doris Horn: Okay. I mean I like her, I just wondered because you know you are supposed be biased when you go look at something.

Morrie Doll: No, you are supposed to be unbiased.

Doris Horn: Unbiased, I mean. That is what I am asking.

Morrie Doll: Frankly there isn't a source as reputable as a university who is adamantly opposed to CAFO's so it is – when it comes to animals and agriculture in Indiana, Indiana is blessed in my opinion that we have Purdue because it is about the only game in town and it is recognized not only nationwide but worldwide as a leader in agriculture research.

Doris Horn: I mean I have three family members in Purdue.

Morrie Doll: That is hard for me to say as loyal IU alumni. But having said that if there is some point you wish for clarification or something we will be happy to try to get that addressed.

Mike Winge: I thought both sides used Purdue pretty extensively for their information.

Morrie Doll: I think they did.

Doris Horn: Okay.

Jeff Valiant: Does anybody else have anything? If not I will entertain a motion to adjourn.

Mike Winge: I will make a motion to adjourn.

Doris Horn: I second.

The motion unanimously carried.

Being no other business the meeting adjourned at 7:15 p.m.

Jeff Valiant, Chairman

ATTEST:

The undersigned Secretary of the Warrick County Board of Zoning Appeals does hereby certify the above and foregoing is a full and complete record of the Minutes of the said Board at their monthly meeting held November 28, 2016.

Sherri Rector, Executive Director